



Connecticut Chapter
645 Farmington Ave.
Hartford, Connecticut 06105
www.connecticut.sierraclub.org

Paul Stacey
Bureau of Water Protection and Land Reuse
DEP
79 Elm St.
Hartford, CT 06106

February 2, 2010

BUREAU OF WATER PROTECTION AND LAND REUSE
OFFICE OF THE BUREAU CHIEF
FEB 2 2010

I submit these comments as the Legislative Chair for the Connecticut Sierra Club. I am a Director of Rivers Alliance, and a Director and Past President of the Quinnipiac River Watershed Association. All three organizations strongly endorse acceptance of the proposed regulations, subject to alteration of Class 4 as described below. I hold a Master of Environmental Management from the Yale School of Forestry and Environmental Studies. I have paddled the state's rivers, and lead canoe trips using a fleet of 8 QRWA canoes which, when not on the river, serve as my unique lawn ornament.

Perspective

These new flow regulations are critically important to the long term health, even survival, of the state's waterways. For the first time, water is recognized as a publically owned resource. The state holds a public trust interest in protecting this resource, in allocating it fairly among competing interests, and in ensuring that the resource itself is not harmed or unduly impacted. The river itself is now recognized as "consumer" of water. Its needs must be considered along with agriculture, industry, and potable water consumers. To fail to complete and implement these regulations will condemn us to continued warfare and litigation stream by stream, rather than using a set of science based flow standards to implement a reasonable and predictable regulatory process.

Problems Left for Further Legislation

Unfortunately, the underlying legislation, PA 05-142, does not enable these regulations to solve all problems. The draft regulations appropriately recognize this, and are appropriately limited in scope to the legislative charge. We have tried, without success, for decades to institute comprehensive statewide water planning. The proposed regulations address only part of the planning universe. Hopefully, they will serve as the incentive to complete the process. The legislation did not include the ability to address existing diversions. They will continue as issued for the lifetime of the permit. The regulations do not address the problem of multi-agency water responsibilities. They do not address the problem of water companies' rate structure too highly dependant on gallons of water sold.

De-Coupling

A decade ago, the state de-coupled electric rates, with costs of generation separated from costs of distribution. While rates did not come down as hoped, it allowed the distribution

companies to promote conservation without hurting their revenues. Perhaps we need to de-couple water as well, making the infrastructure costs a major portion of a customer's bill.

Tragedy of the Commons

The necessity for these regulations was foretold by a 1968 Science paper authored by Garrett Hardin. It explains, for farmers sharing a meadow, how it is rational behavior for each farmer to add his own cows to the meadow herd. The farmer derives benefits for himself from each additional cow. However, each cow consumes part of the resource. The addition of sufficient cows will eventually destroy the meadow. This economic theory is called "the tragedy of the commons". The analogy to water withdrawals is obvious. It is to an individual's benefit to dip his cup in the water as often as he can to fulfill all of his needs. However, we eventually reach a point where the river runs dry. It is no longer ecologically sustainable, and dies, and can no longer fulfill human needs either.

Contemporary Environmental Regulation

These draft regulations provoke a new way of thinking about the river. Conservation of the resource must become a priority. If withdrawals for lawn watering and car washing in August result in dry stream beds, their consequences must be seen as unacceptable. We must elevate statewide planning issues far higher than before. Interbasin transfers and interconnections must be considered. Access to grey water for non-potable uses must be provided. And, yes, we should reconsider our legal prohibition on use of Class B waters for potable uses. We are, after all, the only state in the country with this prohibition.

Historical Reaction to Regulation

The reaction of water companies and other opponents interestingly follows the traditional pattern of new regulation we have followed since the 1970s. They do raise legitimate concerns which need to be addressed. However, the natural resource protected by these regulations is important, and is part of the public trust. The solution is not to abandon the regulatory effort, but to find solutions to the concerns voiced, including the potential costs. We have learned to do this with many activities which cause environmental harm. Previously, the costs of such harm were externalized: they were borne by society as a whole. Now, we insist that the costs of environmental harm caused are internalized, and included in the costs of the enterprise. Costs of the infrastructure necessary to meet the intent of these regulations must be included in the cost of doing business, even it means modest rate increases for water consumers.

While those opposing these draft regulations raise some valid concerns, those concerns should not derail the regulations, but should inform the process in order to create a better outcome.

Appropriate Science

I believe the minimum flows required are grounded in good science, and appropriate to provide for the continued health of the stream in all but extreme drought conditions. They must be seen as the minimal flows necessary, based on only Q99 flows.

Bifurcation

A number of stakeholders have suggested that this become a two step process. Classify all of the streams first, they say, then finish drafting the regulations. However, designation and definition of the Classes is an integral part of the regulations. How could Classes be assigned

The DPH's statutory responsibilities extend only to potable water. They have no responsibility to balance competing needs, but only to ensure that potable water is used appropriately.

There is little history of close and effective cooperation between the two agencies. To appoint them as equal guardians of the state's water resources would be to create gridlock, and probably to render the regulations ineffective and inoperable.

Costs

Yes, there will certainly be costs involved in complying with the regulations. Some dams will require engineering to be able to provide small releases. Pipe will have to be laid. New interconnections may be necessary. Additional storage may be required. I believe these costs will be in line with infrastructure costs already borne by water companies. They may require a small increase in consumer rates in some cases. If so, they derive from internalizing the costs of mitigating the environmental harm from over-consumption of a watercourse.

Agriculture

The Commissioner of Agriculture in his submission has requested what amounts to essentially a waiver of these regulations for agricultural operations. Agriculture is enormously important to the state in many ways, and receives Sierra's full support. Indeed, their campaign slogan is the most powerful I have ever encountered: "No farms, no food". I support measures to avoid unnecessary flow regulation impacts on farming operations, but request that these be considered carefully, perhaps on a case by case basis, rather than a blanket exemption.

Mitigation

There are a number of ways in which the proposed regulations mitigate the concerns of the water companies and other consumers. These include:

- a very long implementation time, which provides opportunity for planning, adjustment, and consideration of remedies
- the DEP Commissioner is given the ability to grant variances upon a showing of need
- comprehensive flow management compacts are allowed
- required flows are adjusted for drought emergencies
- numerous exemptions are granted for specific situations; 20 are enumerated

The major statewide environmental organizations have prepared a position statement on these regulations. A copy is attached.

Submitted by

Martin Mador
130 Highland Ave.
Hamden, CT 06518
martin.mador@aya.yale.edu

Audubon Connecticut
Connecticut Forest and Park Association
Connecticut Fund for the Environment
Connecticut League of Women Voters
Farmington River Watershed Association
Housatonic Valley Association
The Nature Conservancy
Quinnipiac River Watershed Association
Rivers Alliance of Connecticut
Sierra Club Connecticut Chapter
Trout Unlimited



Contact:

Margaret Miner(RA) (203) 788-5161
Mary Mushinsky(QRWA) 203-430-0921
David Sutherland(TNC) 860-508-0222
Lynn Werner(HVA) 860-672-6678

January 20, 2010

CONNECTICUT ENVIRONMENTAL GROUPS UNITE FOR EFFECTIVE STREAMFLOW REGULATIONS

No River Left Behind

After forty years of waiting, environmental groups across the state agree that the streamflow regulations proposed by the Department of Environmental Protection (DEP) constitute the first and most essential step toward addressing Connecticut's water supply management problem. If we fail to complete and implement them, we are condemned to repeat our past: years of expensive case-by-case litigation.

● A Long History of Effort Finally Shows Some Promise

For decades, the General Assembly, other state officials and advocates have sought to provide streamflow protections. Then in 2005, the General Assembly updated prior, inadequate statutes by passing a law requiring the DEP to develop new regulations to protect both river flows and supply for all of society's various water needs. The draft regulations have the potential to be the first measure in 40 years to come close to meeting those goals.

These draft regulations were written to establish a clear set of environmental goals for the rivers and streams of Connecticut. We wish to ensure that these public-trust natural resources continue to provide the water to support our communities, our environment, and our economy. We also want them to survive as viable environmental habitats. Unless we have appropriate goals for the health of our rivers, we will continue to manage water in a piecemeal, first-come, first-served manner with no proper provisions for our environment or future water needs. *The need for reform of the state's management of water resources is not controversial. Taking this first step apparently still is for some. These regulations are the first step in the process of instituting comprehensive statewide water planning.*

- **This public process for the proposed streamflow regulations *must be allowed to proceed to conclusion*. This process allows the DEP to hear comments and make changes to the draft regulations that are necessary to benefit both the state's environment and water consumers.**

The draft regulations are good. Connecticut's environmental groups agree that these regulations put people first – they ensure that water needed for fire and other emergencies are not affected, that dams used for flood control are exempt, and that adequate water for communities will be available